

**ASSEMBLY BILL**

**No. 1386**

---

**Introduced by Committee on Labor and Employment (Roger  
Hernández (Chair), Alejo, Chau, and Holden)**

March 4, 2013

---

An act to amend Section 98.2 of the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 1386, as introduced, Committee on Labor and Employment. Employment: employee complaints: final orders.

Existing law vests with the Labor Commissioner the authority to hear employee complaints regarding the payment of wages and other employment-related issues. Existing law requires the Labor Commissioner to file an order, decision, or award within 15 days of hearing an employee complaint. If no party to the action appeals the order, decision, or award within 10 days after its service, existing law provides that the order, decision, or award becomes the final order for the action. The Labor Commissioner is required to file the final order with the clerk of the superior court of the appropriate county within 10 days of the order, decision, or award becoming the final order for the action, unless the parties reach a settlement approved by the Labor Commissioner. Existing law then requires the clerk of the superior court to enter judgment in conformity with the final order, which has the same force and effect as a judgment entered in a civil action.

This bill would authorize the Labor Commissioner to file a certified copy of the order within 10 days of its becoming final with the county recorder of any county in which the employer's property may be located. The bill would provide that the amount due under the final order shall

be a lien on the employer's personal and real property, as specified, and would require the county recorder to record and index the order as a mortgage on real estate and to file and index the order as a security interest, as specified. By requiring a higher level of service on a local agency, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 98.2 of the Labor Code is amended to  
2 read:

3 98.2. (a) Within 10 days after service of notice of an order,  
4 decision, or award the parties may seek review by filing an appeal  
5 to the superior court, where the appeal shall be heard de novo. The  
6 court shall charge the first paper filing fee under Section 70611 of  
7 the Government Code to the party seeking review. The fee shall  
8 be distributed as provided in Section 68085.3 of the Government  
9 Code. A copy of the appeal request shall be served upon the Labor  
10 Commissioner by the appellant. For purposes of computing the  
11 10-day period after service, Section 1013 of the Code of Civil  
12 Procedure is applicable.

13 (b) As a condition to filing an appeal pursuant to this section,  
14 an employer shall first post an undertaking with the reviewing  
15 court in the amount of the order, decision, or award. The  
16 undertaking shall consist of an appeal bond issued by a licensed  
17 surety or a cash deposit with the court in the amount of the order,  
18 decision, or award. The employer shall provide written notification  
19 to the other parties and the Labor Commissioner of the posting of  
20 the undertaking. The undertaking shall be on the condition that, if  
21 any judgment is entered in favor of the employee, the employer  
22 shall pay the amount owed pursuant to the judgment, and if the  
23 appeal is withdrawn or dismissed without entry of judgment, the  
24 employer shall pay the amount owed pursuant to the order,  
25 decision, or award of the Labor Commissioner unless the parties

1 have executed a settlement agreement for payment of some other  
2 amount, in which case the employer shall pay the amount that the  
3 employer is obligated to pay under the terms of the settlement  
4 agreement. If the employer fails to pay the amount owed within  
5 10 days of entry of the judgment, dismissal, or withdrawal of the  
6 appeal, or the execution of a settlement agreement, a portion of  
7 the undertaking equal to the amount owed, or the entire undertaking  
8 if the amount owed exceeds the undertaking, is forfeited to the  
9 employee.

10 (c) If the party seeking review by filing an appeal to the superior  
11 court is unsuccessful in the appeal, the court shall determine the  
12 costs and reasonable attorney's fees incurred by the other parties  
13 to the appeal, and assess that amount as a cost upon the party filing  
14 the appeal. An employee is successful if the court awards an  
15 amount greater than zero.

16 (d) If no notice of appeal of the order, decision, or award is filed  
17 within the period set forth in subdivision (a), the order, decision,  
18 or award shall, in the absence of fraud, be deemed the final order.

19 (e) The Labor Commissioner shall file, within 10 days of the  
20 order becoming final pursuant to subdivision (d), a certified copy  
21 of the final order with the clerk of the superior court of the  
22 appropriate county unless a settlement has been reached by the  
23 parties and approved by the Labor Commissioner. Judgment shall  
24 be entered immediately by the court clerk in conformity therewith.  
25 The judgment so entered has the same force and effect as, and is  
26 subject to all of the provisions of law relating to, a judgment in a  
27 civil action, and may be enforced in the same manner as any other  
28 judgment of the court in which it is entered. Enforcement of the  
29 judgment shall receive court priority.

30 (f) (1) In order to ensure that judgments are satisfied, the Labor  
31 Commissioner may serve upon the judgment debtor, personally  
32 or by first-class mail at the last known address of the judgment  
33 debtor listed with the division, a form similar to, and requiring the  
34 reporting of the same information as, the form approved or adopted  
35 by the Judicial Council for purposes of subdivision (a) of Section  
36 116.830 of the Code of Civil Procedure to assist in identifying the  
37 nature and location of any assets of the judgment debtor.

38 (2) The judgment debtor shall complete the form and cause it  
39 to be delivered to the division at the address listed on the form  
40 within 35 days after the form has been served on the judgment

1 debtor, unless the judgment has been satisfied. In case of willful  
2 failure by the judgment debtor to comply with this subdivision,  
3 the division or the judgment creditor may request the court to apply  
4 the sanctions provided in Section 708.170 of the Code of Civil  
5 Procedure.

6 *(g) The Labor Commissioner may file, within 10 days of the*  
7 *order becoming final pursuant to subdivision (d), a certified copy*  
8 *of the final order with the county recorder of any county in which*  
9 *the employer's property may be located. The order may be filed*  
10 *in any and all counties of the state, at the Labor Commissioner's*  
11 *discretion and depending upon information the Labor*  
12 *Commissioner obtains concerning the employer's assets. The*  
13 *amount found due under the order shall be a lien in favor of the*  
14 *employee named in the order, and against the personal and real*  
15 *property of the employer named in the order, within the county in*  
16 *which the order is filed. The recorder shall accept and file the*  
17 *order and record it as a mortgage on real estate, shall file the*  
18 *same as a security interest, and shall index the same as a mortgage*  
19 *on real estate and as a security interest. The recorder shall include*  
20 *all charges for the services to be performed by him or her, as*  
21 *required by this section, in the amount due under the lien.*

22 ~~(g)~~

23 *(h) Notwithstanding subdivision (e), the Labor Commissioner*  
24 *may stay execution of any judgment entered upon an order,*  
25 *decision, or award that has become final upon good cause appearing*  
26 *therefor and may impose the terms and conditions of the stay of*  
27 *execution. A certified copy of the stay of execution shall be filed*  
28 *with the clerk entering the judgment.*

29 ~~(h)~~

30 *(i) When a judgment is satisfied in fact, other than by execution,*  
31 *the Labor Commissioner may, upon the motion of either party or*  
32 *on its own motion, order entry of satisfaction of judgment. The*  
33 *clerk of the court shall enter a satisfaction of judgment upon the*  
34 *filing of a certified copy of the order.*

35 ~~(i)~~

36 *(j) The Labor Commissioner shall make every reasonable effort*  
37 *to ensure that judgments are satisfied, including taking all*  
38 *appropriate legal action and requiring the employer to deposit a*  
39 *bond as provided in Section 240.*

40 ~~(j)~~

1     (k) The judgment creditor, or the Labor Commissioner as  
2 assignee of the judgment creditor, is entitled to court costs and  
3 reasonable attorney's fees for enforcing the judgment that is  
4 rendered pursuant to this section.

5     SEC. 2. No reimbursement is required by this act pursuant to  
6 Section 6 of Article XIII B of the California Constitution because  
7 a local agency or school district has the authority to levy service  
8 charges, fees, or assessments sufficient to pay for the program or  
9 level of service mandated by this act, within the meaning of Section  
10 17556 of the Government Code.

O